

**Letter of Findings: 09-0674
Waste Tire Management Fee
For 2005 through 2008**

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ISSUE

I. Waste Tire Management Fee.

Authority: IC § 13-11-2-231(b); IC § 13-11-2-245(d); IC § 13-20-13-7; Commissioner's Directive 16 (September 2005); The What and How of Sales Tax <http://www.in.gov/dor/3699.htm>. (May 29, 2007).

Taxpayer argues that it is not required to collect Indiana's Waste Tire Management Fee.

STATEMENT OF FACTS

Taxpayer is an Indiana trailer dealer. Taxpayer sells cargo trailers, horse trailers, and other types of non-motorized vehicles. The Department of Revenue (Department) conducted an audit review of taxpayer's business records and concluded that Taxpayer should have been collecting Waste Tire Management Fees (Tire Fee) from its trailer customers. Taxpayer disagreed and submitted a protest to that effect.

I. Waste Tire Management Fee.

DISCUSSION

Taxpayer argues that he was not required to collect Tire Fees because he sold only non-motorized trailers to his customers.

IC § 13-20-13-7 imposes a fee on each new tire sold in a retail transaction:

(a) A fee of twenty-five cents (\$0.25) is imposed on the sale of the following:

- (1) Each new tire that is sold at retail.
- (2) Each new tire mounted on a new vehicle sold at retail.

(b) The person that sells the new tire or vehicle at retail to the ultimate consumer of the tire or vehicle shall collect the fee imposed by this section.

(c) A person that collects a fee under subsection (b): (1) shall pay the fees collected under subsection (b): (A) to the department of state revenue; and (B) at the same time and in the same manner that the person pays the state gross retail tax collected by the person to the department of state revenue....

For purposes of this Tire Fee, IC § 13-11-2-231(b) defines "tire" as "a continuous solid or pneumatic rubber covering that is designed to encircle a wheel of a vehicle."

For purposes of the Tire Fee, IC § 13-11-2-245(d) defines a "vehicle" as follows:

"Vehicle", for purposes of [IC 13-20-13-7](#), means a motor vehicle, a farm tractor (as defined in [IC 9-13-2-56](#), an implement of agriculture (as defined in [IC 9-13-2-77](#)), a semitrailer (as defined in [IC 9-13-2-164\(a\)](#) or [IC 9-13-2-164\(b\)](#)), and types of equipment, machinery, implements, or other devices used in transportation, manufacturing, agriculture, construction, or mining. The term does not include a lawn and garden tractor that is propelled by a motor of not more than twenty-five (25) horsepower.

In short, persons selling "vehicles" are required to collect a twenty-five cent "tire fee" for each "tire" used on the "vehicle."

The Department has issued guidance on this issue. Commissioner's Directive 16 (September 2005) explains "exemptions" to the Tire Fee as follows:

The fee is not imposed on tires used on lawn mowers and garden tractors that are propelled by motors with less than twenty-five (25) horsepower. The fee is not imposed on new tires mounted on a non self-propelled vehicle for personal use such as a boat trailer or a camper trailer. (Emphasis added).

In a document formerly posted at the Department's Internet site, the Department stated that:

Businesses that sell tires – These businesses must collect and remit the Indiana tire fee of 25 cents per tire. All tires mounted on propelled vehicles are subject to the tire fee, except for garden tractors propelled with less than 25 horsepower motors. Non-self-propelled vehicles (trailers) are not subject to the tire fee. The What and How of Sales Tax <http://www.in.gov/dor/3699.htm>. (May 29, 2007) (Emphasis in original).

The Department's stance on this issue is clear; tires mounted trailers such as those sold by Taxpayer are not subject to the Tire Fee.

FINDING

Taxpayer's protest is sustained.

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